

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1314 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

KHODABHAI VASTABHAI LUHAR THROUGH P.O.A. HOLDER

Versus

MAMLATDAR AMRELI

Appearance:

1. Special Civil Application No. 1314 of 2003
MR MB PARIKH for Petitioner No. 1
Mr HD DAVE, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 11/02/2004

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP
Shri H.D. Dave for the respondents. At the request of

the learned advocates, the petition is finally heard today.

2. The undisputed facts, which have given rise to the petition, are as under:

2.1 The petitioner was granted 5 acres of land by the government in the past at village Mota Bhandaria, taluka Amreli. After getting the said land, which was being cultivate by the petitioner, the petitioner had made encroachment over government land admeasuring 1 acre 6 gunthas, adjoining the land, which was granted to him. As the petitioner had made encroachment, proceedings for removal of the encroachment had been initiated by the authorities, but ultimately, the government took a lenient view and by an order passed by the Deputy Collector on 6.09.1977, the encroachment made by the petitioner was regularised.

2.2 After 6.9.1977, that is, the day when his first encroachment was regularised, the petitioner again made an encroachment on 2 acres of government land. The Mamlatdar, Amreli, had initiated proceedings for removal of the encroachment by filing Encroachment Case No. 5/90 and ultimately by his order dated 21.05.1992, directed the petitioner to remove the encroachment. The petitioner thereafter submitted an application to the Mamlatdar for regularisation of the said encroachment, but the said application requesting for regularisation had been turned down by the Mamlatdar, by his order dated 3rd/9th June, 1993.

2.3 Being aggrieved by the said order passed by the Mamlatdar, whereby the application of the petitioner for regularisation of the encroachment had been rejected, the petitioner had filed an appeal before the Collector, Amreli. The Collector, confirmed the order of the Mamlatdar by his order dated 24.8.1993. Being aggrieved by the order dated 24.8.1993 passed by the Collector, the petitioner filed a revision application before the Secretary (Appeals), Revenue Department, State of Gujarat.

2.4 After hearing the petitioner and looking to the facts of the case, by an order dated 19.5.1995, the Secretary (Appeals) remanded the matter to the Collector, Amreli, with a direction that the Collector should consider the petitioner's case for regularization of the encroachment in question.

2.5 In pursuance of the said direction, the Collector

ultimately, by his order dated 19.5.1996, rejected the application of the petitioner for regularisation of encroachment of 2 acres of land. The petitioner filed a revision application against the said order because, according to the petitioner, the Collector, had not considered Government Resolution dated 8.1.1980 while considering the petitioner's application for regularisation.

2.6 The order dated 19.5.1996 passed by the Collector was challenged before the Secretary (Appeals) and the said order was confirmed by the Secretary (Appeals), by his order dated 6.6.2001.

3. The petitioner has approached this court with a prayer that the order dated 6.6.2001 passed by the Secretary (Appeals), confirming the order of the Collector dated 19.5.1996, be quashed and set aside because, while rejecting the application for regularisation, the Collector did not consider Government Resolution dated 8.1.1980 in its true spirit.

4. The revisional authority dismissed the revision application for the reason that, if the encroachment made by the petitioner is regularised, the petitioner's holding would exceed the limit of 8 acres of land. It has been observed in the order that as the petitioner had made second encroachment and, upon regularisation, the total holding of the petitioner would exceed 8 acres, it was not possible to regularise the encroachment in favour of the petitioner.

5. Learned advocate Shri Parikh appearing for the petitioner has submitted that the petitioner is not interested in having more than 8 acres of land. His submission is that if the Collector reconsiders his application for regularisation in a manner, whereby total holding of the petitioner does not exceed 8 acres, the petitioner is ready and willing to give 2 1/2 times the market value of the land as per the policy of the government. It has been submitted by the learned advocate that if the encroachment is regularised in toto, the petitioner would be having 6 gunthas of land in excess of 8 acres. The petitioner has submitted that he shall submit an undertaking before the Collector that he would immediately part with 6 gunthas of land so as to see that his total holding does not exceed 8 acres, and he would file a further undertaking to the effect that in future he would never make any encroachment on any government land.

6. On the other hand, learned AGP Shri Dave has submitted that the petitioner was once treated leniently when the first encroachment made by the petitioner was regularised by the Deputy Collector. Thereafter, the petitioner made another encroachment and, therefore, no leniency should be shown to the petitioner. He has tried to support the orders passed by the respondent authorities.

7. I have heard the learned advocates and have also gone through the impugned order and other orders.

8. Upon perusal of the record and the government policy reflected in Government Resolution dated 8.1.1980, it is clear that the encroachment should never be regularised in a manner that the total holding of the encroacher exceeds 8 acres. The petitioner has submitted that he would like to make another application to the Collector so that, if possible, the encroachment may be regularised in such a manner that the total holding of the petitioner does not exceed 8 acres. He has also submitted that possibly the land encroached by the petitioner is such that it cannot be independently disposed of by the government in favour of anybody and, therefore, it would be in the interest of the government also to regularise the encroachment because the government would be getting a higher price for the land, which cannot be disposed of independently due to smallness of its size.

9. Looking to the submissions made by the petitioner, and upon perusal of the contents of the Government Resolution dated 8.1.1980, it is suggested that the petitioner may submit another application to the Collector, which the Collector may consider in the light of the contents of the Government Resolution dated 8.1.80. If the Collector is satisfied with the undertakings, which the petitioner is ready and willing to file, and if the Collector believes that the land, which has been encroached by the petitioner, cannot be independently granted in favour of anybody else, then it would be open to the Collector to reconsider his earlier decision in a manner which would not violate the policy laid down in the Government Resolution dated 8.1.1980. I am sure that, if such an application is submitted by the petitioner, the Collector will consider the petitioner's case with due sympathy, especially when the petitioner is ready and willing to file the undertakings as suggested hereinabove and is also ready and willing to pay 2 1/2 times the market value of the land in question.

10. The petition is allowed. Rule is made absolute to the above extent with no order as to costs.

11. The order dated 6.6.2001 is modified to the effect that if the petitioner makes another application to the Collector, the Collector shall consider the same in the light of the observations made hereinabove and without being influenced by the order passed by the revisional authority in his order dated 6.6.2001.

D.S. permitted.

(A.R. Dave, J.)

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